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UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.

Issued by the Department of Transportation  
on the 22nd day of March, 2000

Application of

**TRANS CONTINENTAL AIRLINES, INC.**

for a disclaimer of jurisdiction and **reissuance** of certificate  
or, alternatively, approval of the transfer of certificate under  
49 U.S.C. 41105

Served : March 22, 2000

Docket OST-2000-6835 - 2

**ORDER DISCLAIMING JURISDICTION  
AND REISSUING CERTIFICATE**

**Summary**

By this order, we disclaim jurisdiction over the proposed transfer to **Express.net** Airlines, LLC, of the section 41102 interstate certificate issued to **Trans** Continental Airlines, Inc. (TCA) and we reissue the certificate in the name of **Express.net** Airlines, LLC (**Express.net**).

**Request for Disclaimer**

TCA is an operating all-cargo carrier that holds a certificate authorizing it to provide interstate scheduled air transportation of property and mail under 49 U.S.C. 41102.<sup>1</sup> The company is headquartered in Ann Arbor, Michigan.

On January 28, 2000, TCA filed an application in Docket OST-2000-6835 requesting the Department to disclaim jurisdiction or, in the alternative, to approve the transfer of TCA's certificate to a newly-formed entity, **Express.net**. **Express.net** was **formed** on January 5, 2000, under the laws of the State of Florida. Its sole member is TCA Acquisition Corporation, which, in turn, is solely owned by David Clark, a U.S. citizen.

<sup>1</sup> See Order 97-6-28, issued June 25, 1997.

TCA states that the requested transfer is part of a corporate restructuring designed to make use of tax and other business advantages available to limited liability companies, and will involve no material change in TCA's ownership, control, management, operations, financial status or citizenship. The applicant declares that, upon the Department's disclaimer of jurisdiction or approval of transfer, all of TCA's management, assets, liabilities, operations, and other corporate responsibilities will be assumed by **Express.net**, which will continue to conduct the cargo air transportation operations now provided by TCA. TCA further states that it is working with the Federal Aviation Administration (FAA) to have its Air Carrier Certificate reissued to **Express.net**.

TCA contends that a disclaimer of jurisdiction is appropriate in this case since the certificate transfer is incidental to a corporate reorganization, and that its request is similar to those granted by the Department in the past.

No objections have been received to TCA's application.<sup>2</sup>

### **Decision**

We have decided to disclaim jurisdiction over the transfer of TCA's certificate to **Express.net** and to reissue TCA's certificates in the **Express.net** name. Based on officially noticeable information, we find that TCA is a U.S. citizen and that it remains fit. With the exception of James Young (President and General Manager) and Stuart Coots (Director of Maintenance) who joined the carrier in May and January 1999, respectively, all of TCA's current management personnel have held their positions with the carrier for several years. Although TCA filed for bankruptcy protection in August 1999, the carrier filed a plan of reorganization with the Bankruptcy Court in November 1999. The plan was approved and the reorganized company emerged from bankruptcy on December 28. Based on the information provided by TCA in its application, we find that the proposed corporate reorganization will have no significant effect on the actual ownership, control, management, citizenship, financial condition, or operations of the carrier. The FAA has advised us that TCA's current operations are satisfactory and that that agency has no objection to a grant of the carrier's application. In similar circumstances in the past, the Department has disclaimed jurisdiction over this type of transaction based on the conclusion that the circumstances of the proposed transfer did not fall within the meaning of section 41105.<sup>3</sup>

In another matter, when TCA was initially certificated in 1994, we limited the company's operations to the use of two aircraft due to its weak financial position at that time. When the carrier's financial position subsequently improved, TCA requested that we remove the aircraft restriction. We agreed and reissued the carrier's certificate removing the restriction.<sup>4</sup> Since then,

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<sup>2</sup> In accordance with the requirements of Part 215 of our rules, which requires that a carrier wanting to change its name notify other similarly-named carriers of its proposed new name, we identified three carriers with names similar to **Express.net--Express Air, Inc. d/b/a Sunrise- Airlines**, **Express Airlines I, Inc. d/b/a Northwest Airlink**, and **Express One International, Inc.** TCA advises us that it provided the Part 215 notice to each of these companies on February 14, 2000.

<sup>3</sup> See, for example, Orders 85-2-66, 88-12-38, 90-7-24, and 92-12-26.

<sup>4</sup> See Order 97-6-28.

however, the company's operations have turned unprofitable and its financial position deteriorated to the point it found it necessary to seek reorganization through the bankruptcy process. TCA has advised us that it plans to expand its fleet in the future. While the carrier's financial position has improved as a result of its recent bankruptcy reorganization and its owner is thus far providing the carrier with needed operating capital, given TCA's recent financial history, we will require that, prior to implementing an expansion of its fleet beyond five aircraft,<sup>5</sup> the carrier provide us with at least 45-days' notice of such intentions and submit updated fitness information relative to those plans, including evidence that it has the necessary financial resources to implement the expansion. This requirement is consistent with our current policy of monitoring carrier growth.

**ACCORDINGLY,**

1. We disclaim jurisdiction over the transfer of the section 41102 interstate scheduled all-cargo certificate issued to Trans Continental Airlines, Inc., to Express.net Airlines, LLC.
2. We reissue the section 41102 interstate scheduled all-cargo certificate issued to Trans Continental Airlines, Inc., by Order 97-6-28, to Express.net Airlines, LLC.
3. We direct that, should Express.net Airlines, LLC propose to utilize more than five aircraft in its operations, it must first notify the Department in writing at least 45 days in advance and demonstrate its continued fitness for such operations.
4. We will serve a copy of this order on the persons listed in Attachment A to this order.

Persons entitled to petition the Department for review of this order under the Department's Regulations, 14 CFR 385.50, may file their petitions within 10 days of the service date of this order.

The action taken in this order will be effective on March 31, 2000,<sup>6</sup> and the filing of a petition for review shall not alter its effectiveness.

By:

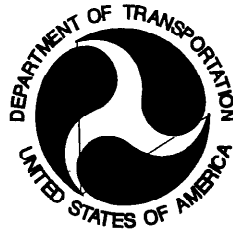
**RANDALL BENNETT**  
Acting Director  
Office of Aviation Analysis

(SEAL)

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<sup>5</sup> In recent years, TCA's fleet consisted of as many as six aircraft. At present, it is operating two B-727's.

<sup>6</sup> This date provides the FAA an opportunity to complete the steps needed to reflect the corporate change in TCA's FAA operating authority.



# Certificate of Public Convenience and Necessity for Interstate Air Transportation

*This Certifies That*

**EXPRESS.NET AIRLINES, LLC**

*is authorized subject to the provisions of Subtitle VII of Title 49 of the United States Code, the orders, rules, and regulations issued thereunder, and the attached Terms, Conditions, and Limitations, to engage in interstate air transportation of property and mail.*

*This Certificate is not transferable without the approval of the Department of Transportation.*

*By Direction of the Secretary*

*Issued by Order 2000-3-19*

*On March 22, 2000*

*Effective on March 31, 2000*

*Randall Bennett*

*Acting Director*

*Office of Aviation Analysis*

**Attachment**



**Terms, Conditions, and Limitations**

**EXPRESS.NET AIRLINES, LLC**

*is authorized to engage in interstate air transportation of property and mail between any point in any State, territory, or possession of the United States or the District of Columbia, and any other point in any of those entities.*

*This authority is subject to the following provisions:*

- (1) The holder shall at all times conduct its operations in accordance with the regulations prescribed by the Department of Transportation for the services authorized by this certificate, and with such other reasonable terms, conditions, and limitations as the Department of Transportation may prescribe in the public interest.*
- (2) The holder is not authorized to carry passengers (other than cargo attendants accompanying freight shipments).*
- (3) The holder's authority under this certificate is effective only to the extent that such operations are also authorized by the Federal Aviation Administration.*
- (4) The holder shall at all times remain a "Citizen of the United States" as required by 49 U.S.C. 40102(a)(15).*
- (5) The holder shall maintain in effect liability insurance coverage as required under 14 CFR Part 205. Failure to maintain such insurance coverage will render a certificate ineffective, and this or other failure to comply with the provisions of Subtitle VII of Title 49 of the United States Code or the Department's regulations shall be sufficient grounds to revoke this certificate.*
- (6) Should the holder propose any substantial changes in its ownership, management, or operations (as that term is defined in 14 CFR 204.2(l)), it must first comply with the requirements of 14 CFR 204.5.*

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*\* This certificate is being reissued to reflect the transfer of the authority contained herein from Trans Continental Airlines, Inc., to Express.net Airlines, LLC.*

(7) *In the event that the holder commences but subsequently ceases all operations for which it was found "fit, willing, and able," its authority under this certificate shall be suspended under the terms of 14 CFR 204.7 and the holder may neither recommence nor advertise such operations unless its fitness to do so has been redetermined by the Department. Moreover, if the holder does not resume operations within one year of its cessation, its authority shall be revoked for dormancy.*

**SERVICE LIST FOR TRANS CONTINENTAL AIRLINES, INC.**

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